

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA

4 v. (S4)O5CR59 (DC)
5 TONGSUN PARK, (Jury Trial)
6 Defendant.
7 -----x

8 New York, NY
9 July 12, 2006
9:30 a.m.

10 Before:

11 HON. DENNY CHIN

12 District Judge

13 APPEARANCES

14 MICHAEL J. GARCIA
15 United States Attorney for the
16 Southern District of New York
17 EDWARD O'CALLAGHAN
STEPHEN MILLER
MICHAEL FARBIARZ
Assistant United States Attorneys

18 KOBRE & KIM
19 Attorneys for Defendant
MICHAEL S. KIM
LEIF T. SIMONSON
20 STEVEN W. PERLSTEIN
Attorney for Defendants

21 CHRISTOPHER CHAN
22 Attorney for Defendant

23 ALSO PRESENT:
24 Nicholas Panagakos, FBI
25

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Charge

1 (In open court; jury present)

2 THE COURT: Please be seated.

3 All right, ladies and gentlemen, you should have two
4 documents, one is the thicker document called the charge, jury
5 charge. The other is a three-page document entitled special
6 verdict form. You can put aside the special verdict form for
7 now. We'll get to that later.

8 The procedure is that I read this to you in open
9 court. You can follow along, if you like.

10 Members of the jury: You have now heard all of the
11 evidence in the case, as well as the final arguments of the
12 parties. We have reached the point where you are about to
13 undertake your final function as jurors. You have paid careful
14 attention to the evidence and I am confident that you will act
15 together with fairness and impartiality to reach a just verdict
16 in the case. My duty at this point is to instruct you as to
17 the law. It is your duty to accept these instructions of law
18 and to apply them to the facts as you determine them, just as
19 it has been my duty to preside over the trial and to decide
20 what testimony and evidence was relevant under the law for your
21 consideration.

22 On these legal matters, you must take the law as I
23 give it to you. If any attorney has stated a legal principle
24 different from any that I state to you in my instructions, it
25 is my instructions that you must follow. You are to consider

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1 these instructions together as a whole. In other words, you
2 are not to isolate or give undue weight to any particular
3 instruction.

4 As members of the jury, the you are the sole and
5 exclusive judges of the facts. You pass upon the evidence.
6 You decide the credibility of the witnesses. You resolve such
7 conflicts as there may be in the testimony. You draw whatever
8 reasonable inferences you decide to draw from the facts as you
9 have determined them, and you decide the weight of the
10 evidence. It is your sworn duty, and you have taken the oath
11 as jurors, to determine the facts and to follow the law as I
12 give it to you. You must not substitute your own notions or
13 opinions of what the law is or ought to be.

14 You are to evaluate the evidence calmly and
15 objectively without prejudice or sympathy. You have to be
16 completely fair and impartial. Your verdict must be based
17 solely on the evidence developed at this trial or the lack of
18 evidence. The parties in this case are entitled to a trial
19 free from prejudice and bias. Our judicial system cannot work
20 unless you reach your verdict through a fair and impartial
21 consideration of the evidence.

22 I remind you that in reaching your verdict, you are to
23 perform your duty of finding the facts without bias or
24 prejudice as to any party. You must remember that all parties
25 stand as equals before a jury in the courts of the United

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1 States. It would also be improper for you to allow any
2 feelings you might have about the nature of the crime charged
3 to interfere with your decision making process. This case is
4 important to the defendant, Tongsun Park, who is charged with a
5 serious crime. Equally, it is important to the government for
6 the enforcement of criminal laws, it is a matter of prime
7 concern to the Court. The fact that the prosecution is brought
8 in the name of the United States does not entitle the
9 government or its witnesses to any greater consideration than
10 that accorded to any other party. By the same token, the
11 government is entitled to no less consideration. The
12 government and Mr. Park stand as equals at the bar of justice.

13 Your verdict must be based solely on the evidence or
14 the lack of evidence.

15 In determining the facts you must rely upon your own
16 recollection of the evidence. What is evidence? Evidence
17 consists only of the testimony of witnesses, the exhibits that
18 have been received and the stipulations of the parties; the
19 statements and arguments made by the lawyers are not evidence.
20 Their arguments are intended to convince you what conclusions
21 you should draw from the evidence or lack of evidence. Now,
22 those arguments are important. You should weigh and evaluate
23 them carefully. But you must not confuse them with the
24 evidence as to what the evidence was. It is your recollection
25 that governs, not the statements of the lawyers. In this

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1 connection, you should bear in mind that a question put to a
2 witness is never evidence. It is the answer to the question
3 that is evidence. One exception to this is that you may not
4 consider any answer that I directed you to disregard or that I
5 ordered to be stricken from the record. You are not to
6 consider such answers.

7 To constitute evidence, exhibits must first be
8 received in evidence. Exhibits marked for identification but
9 not admitted are not evidence, nor are materials brought forth
10 only to refresh a witness' recollection.

11 There are two types of evidence that you may properly
12 use in deciding whether a defendant is guilty or not guilty of
13 a crime with which he is charged. One type of evidence is
14 called direct evidence. Direct evidence of a fact in issue is
15 presented when a witness testifies to that fact based on what
16 he or she personally saw, heard or observed. In other words,
17 when a witness testifies about a fact in issue that is known of
18 the witness' own knowledge by virtue of what he or she feels,
19 sees, touches or hears, that is called direct evidence of that
20 fact. The second type of evidence is circumstantial evidence.
21 Circumstantial evidence is evidence that tends to prove a
22 disputed fact indirectly by proof of other facts.

23 There is a simple example of circumstantial evidence
24 that is often used in this courthouse. Assume that when you
25 came in the courthouse this morning, the sun was shining and it

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1 was a nice day outdoors. Assume that the courtroom blinds, and
2 I'm now talking about the heavy blue curtains, were drawn, and
3 you could not look outside. Assume further that as you were
4 sitting here, someone walked in with an umbrella that was
5 dripping wet. Somebody else then walked in with a raincoat
6 that was also dripping wet. Now, because you could not look
7 outside the courtroom and you could not see whether it was
8 raining, you would have no direct evidence of that fact. But
9 from the combination of facts I had asked you to assume, it
10 would be reasonable and logical for you to conclude that it was
11 raining. That is all there is to circumstantial evidence. You
12 determine from reason and experience and common sense from one
13 established fact the existence or the non-existence of some
14 other fact.

15 The manner of drawing inferences from facts in
16 evidence is not a matter of guesswork or speculation. An
17 inference is a logical, factual conclusion that you might
18 reasonably draw from other facts that have been proven. Many
19 material facts, such as state of mind, are rarely easily proven
20 by direct evidence. Usually such facts are established by
21 circumstantial evidence, and the reasonable inferences you
22 draw.

23 Circumstantial evidence may be given as much weight as
24 direct evidence. The law makes no distinction between direct
25 and circumstantial evidence, but simply requires that before

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1 convicting a defendant, the jury must be satisfied of the
2 defendant's guilt beyond a reasonable doubt based on all the
3 evidence in the case.

4 You should draw no inference or conclusion for or
5 against any party by reason of lawyers making objections or my
6 rulings on such objections. Counsel have not only the right
7 but the duty to make legal objections when they think that such
8 objections are appropriate. In addition, you should draw no
9 inference or conclusion for or against any party by reason of
10 anyone's conduct or comments during the trial, other than the
11 conduct and statements of witnesses who took the witness stand
12 and testified.

13 From time to time, the lawyers and I had sidebar
14 conferences and other conferences out of your hearing. These
15 conferences involved procedural and other matters and none of
16 the events relating to these conferences should enter into your
17 deliberations at all.

18 Nothing I say is evidence. If I commented on the
19 evidence at any time, do not accept my statements in place of
20 your recollection or your interpretation. It is your
21 recollection and interpretation that govern. Also, do not draw
22 any inference from any of my rulings.

23 Now, on this note we did get a note from one of the
24 jurors during the trial about my description of the documents
25 and whether it was evidence. That really wasn't evidence, but

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1 I think I was just describing the documents and the lawyers
2 were agreeing that I was accurately describing the documents.
3 I did that only because if you just heard a number, you
4 wouldn't know what it was, and in virtually every instance
5 those were the FBI reports we had talked about.

6 At times I may have admonished a witness or directed a
7 witness to be responsive to questions or to keep his or her
8 voice up. At times I asked a question myself. Any questions
9 that I asked or instructions that I gave were intended only to
10 clarify the presentation of evidence, and to bring out
11 something that I thought might be unclear. You should draw no
12 inference or conclusion of any kind, favorable or unfavorable,
13 with respect to any witness or any party in the case by reason
14 of any comment, question, ruling or instruction of mine. Nor
15 should you infer that I have any views as to the credibility of
16 any witness as to the weight of the evidence or as to how you
17 should decide any issue that is before you. That is entirely
18 your role.

19 I am going to give you a few general instructions as
20 to how you may determine whether witnesses are credible and
21 reliable; whether the witnesses told the truth at this trial
22 and whether they knew what they were talking about. How do you
23 determine that? It is really just a matter of using your
24 common sense, your good judgment and your experience. First,
25 consider how well the witness was able to observe or hear what

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1 he or she testified about. The witness may be honest but
2 mistaken. How did the witness' testimony impress you? Did the
3 witness appear to be testifying honestly, candidly? Were the
4 witness's answers direct or were they evasive? Consider the
5 witness's demeanor, manner of testifying and strength in the
6 accuracy of recollection. Consider whether any outside factors
7 might have affected a witness's ability to perceive events.
8 Consider the substance of the testimony. How does the
9 witness's testimony compare with other proof in the case? Is
10 it corroborated or is it contradicted by other evidence? If
11 there is a conflict, does any version appear reliable, and if
12 so, which version seems more reliable?

13 In addition, you may consider whether a witness had
14 any possible bias or relationship with a party or any possible
15 interest in the outcome of the case. Such a bias or
16 relationship does not necessarily make the witness unworthy of
17 belief. These are simply factors that you may consider. If a
18 witness made statements in the past that are inconsistent with
19 his or her testimony during the trial concerning facts that are
20 at issue here, you may consider that fact in deciding how much
21 of the testimony, if any, to believe.

22 In making this determination you may consider whether
23 the witness purposely made a false statement or whether it was
24 an innocent mistake. You may also consider whether the
25 inconsistency concerns an important fact or merely a small

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1 detail as well as whether the witness had an explanation for
2 the inconsistency and if so, whether that explanation appealed
3 to your common sense.

4 If you find that a witness has testified falsely as to
5 any material fact or if you find that a witness has been
6 previously untruthful when testifying under oath or otherwise,
7 you may reject that witness' testimony in its entirety or you
8 may accept only those parts that you believe to be truthful or
9 that are corroborated by other independent evidence in the
10 case. It is for you, the jury, and for you alone; not the
11 lawyers or the witnesses or me as a judge, to decide the
12 credibility of witnesses who appear here and the weight that
13 their testimony deserves.

14 You do not leave your common sense, good judgment or
15 life experiences behind you when you walk into the courtroom.
16 You carry that background into the jury room during your
17 deliberations. Please remember, however, that you may not use
18 your experience and common sense to fill in or create evidence
19 that does not exist. You use them only to draw reasonable
20 inferences from proven facts or to weigh and evaluate the
21 evidence provided during the trial.

22 You have heard testimony of law enforcement officials.
23 The fact that a witness may be employed by the federal
24 government as a law enforcement official does not mean that his
25 or her testimony is necessarily deserving of more or less

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1 consideration or greater or lesser weight than that of an
2 ordinary witness. At the same time, it is quite legitimate for
3 defense counsel to try to attack the credibility of a law
4 enforcement witness on the grounds that his or her testimony
5 may be colored by a personal or professional interest in the
6 outcome of the case.

7 It is your decision after reviewing all the evidence
8 whether to accept the testimony of the law enforcement
9 witnesses and to give that testimony whatever weight, if any,
10 you find it deserves.

11 You have heard evidence during the trial that some
12 witnesses have discussed the facts of the case and their
13 testimony with the lawyers before the witnesses appear in
14 court. Although you may consider that fact when you're
15 evaluating a witness's credibility, I should tell you there's
16 nothing unusual or improper about a witness meeting with
17 lawyers before testifying, so that the witness can be aware of
18 the subjects he or she will be questioned about, focus on those
19 subjects and have the opportunity to review relevant exhibits
20 before being questioned about them. Such consultation helps
21 conserve your time and the Court's time. In fact, it would be
22 unusual to call a witness without such consideration.

23 You have heard the testimony of a witness who
24 testified that he was actually involved in carrying out the
25 crime charged in the indictment. There has been a great deal

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1 said about this so-called accomplice witness in the summations
2 and whether you should believe him. The government argues, as
3 it is permitted to do, that it must take the witnesses as it
4 finds them, and that it frequently must use such testimony in
5 criminal prosecutions, because otherwise it would be difficult
6 or impossible to detect and prosecute wrongdoers. The
7 testimony of accomplices is properly considered by the jury.
8 If accomplices could not be used, there would be many cases in
9 which real guilt and convictions should be had, but in which
10 convictions would be unobtainable. For these very reasons the
11 law allows the use of accomplice testimonies. Indeed, it is
12 the law in federal courts that the testimony of one accomplice
13 may be enough in itself to convict a defendant if it convinces
14 you of a defendant's guilt beyond a reasonable doubt.

15 Because of the possible interest an accomplice may
16 have in testifying, however, the accomplice's testimony should
17 be scrutinized with special care and caution. The fact that a
18 witness is an accomplice can be considered by you as bearing on
19 his or her credibility, but it does not follow simply because a
20 person has admitted to participating in one or more crimes,
21 that he or she is incapable of giving a truthful version of
22 what happened. Accomplice witness testimony should be given
23 such weight as it deserves in light of the facts and
24 circumstances before you, taking into account the witness'
25 demeanor, candor, the strength and accuracy of a witness'

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1 recollection, his or her background, and the extent to which
2 his or her testimony is or is not corroborated by other
3 evidence in the case.

4 You may consider whether the accomplice witness, like
5 any other witness called in this case, has an interest in the
6 outcome of the case, and if so, whether it has affected his or
7 her testimony.

8 You heard testimony about an agreement between the
9 government and a witness. I must caution you that it is no
10 concern of yours why the government made an agreement with a
11 witness. Your sole concern is whether a witness has given
12 truthful testimony here in this courtroom before you. In
13 evaluating the testimony of an accomplice witness, you should
14 ask yourselves whether the accomplice would benefit more by
15 lying or by telling the truth. Was the testimony made up in
16 any way because the witness believed or hoped that he would
17 somehow receive favorable treatment by testifying falsely, or
18 did the witness believe that his interests would be best served
19 by testifying truthfully.

20 If you believe that the witness was motivated by hopes
21 of personal gain, was the motivation one that would cause the
22 witness to lie, or was it one that would cause him to tell the
23 truth? Did this motivation color the testimony? If you find
24 that the testimony was false, you should reject it. If,
25 however, after a cautious and careful examination of the

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1 accomplice witness' testimony and demeanor upon the witness
2 stand, you are satisfied that the witness told the truth, you
3 should accept it as credible and act upon it accordingly.

4 As with any witness, let me emphasize that the issue
5 of credibility need not be decided in an all or nothing
6 fashion. Even if you find that a witness testified falsely in
7 one part, you still may accept his testimony in other parts or
8 may disregard all of it. That is a determination entirely for
9 you, the jury.

10 (Continued next page.)

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1 THE COURT: You heard evidence that the government's
2 cooperating witness has pled guilty to charges arising out of
3 the same crime alleged in the indictment. You may not conclude
4 that the defendant is guilty because the prosecution witness
5 pled guilty to similar charges. That witness' decision to
6 plead guilty was a personal decision about his own guilt and
7 may not be used by you in any way to infer the defendant's
8 guilt.

9 You have heard testimony that the defendant made
10 certain statements outside the courtroom to law enforcement
11 authorities in which the defendant claimed that his conduct was
12 consistent with innocence and not with guilt. The government
13 claims that many of these statements were false. If you find
14 that a defendant gave a false statement to divert suspicion
15 from himself, you may but are not required to infer that the
16 defendant believed that he was guilty. You may not, however,
17 infer on the basis of this alone that the defendant is in fact
18 guilty of the crime with which he is charged. Whether the
19 evidence of the defendant's statement's shows that the
20 defendant believed that he was guilty and the significance if
21 any to be attached to any such evidence are matters for you,
22 the jury, to decide.

23 Tongsun Park, the defendant, is formally charged in an
24 indictment. As I instructed you at the outset of this case,
25 the indictment is a charge or accusation. It is not evidence.

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1 It does not purport to prove or even indicate guilt. Hence,
2 you are to give it no weight in deciding the defendant's guilt
3 or nonguilt. What matters is the evidence you heard at this
4 trial.

5 The indictment charges the defendant Tongsun Park with
6 conspiracy, that is, entering an agreement to violate federal
7 law. He is charged with conspiring to commit three separate
8 crimes: (1) acting in the United States as an agent of a
9 foreign government, to wit, the government of Iraq, without
10 prior notification to the Attorney General as required by law,
11 in violation of Title 18 U.S.C. Section 951; (2) acting in the
12 United States as an agent of a foreign principal, to wit, the
13 government of Iraq, without registering with the Attorney
14 General as required by law, in violation of the Foreign Agents
15 Registration Act of 1938, otherwise known as FARA, Title 22
16 U.S.C. Section 612(a) and 618(a)(1); and (3) transporting,
17 transmitting or transferring and attempting to transport
18 transmit and transfer, funds from a place outside the United
19 States, in this case Iraq, to a place in the United States,
20 with intent to promote the carrying on of specified unlawful
21 activity, to wit, a violation of FARA, in violation of Title 18
22 U.S.C. Sections 1956(a)(2)(A), and (c)(7)(D).

23 I will now describe the elements of this conspiracy
24 charge and its three objects.

25 A conspiracy is a kind of criminal partnership, an

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1 agreement of two or more persons to join together to accomplish
2 some unlawful purpose. The crime of conspiracy to violate a
3 federal law as charged in this indictment is an independent
4 offense. It is separate and distinct from the actual violation
5 of any specific federal law which the law refers to as
6 substantive crimes. In this case, the substantive crimes that
7 are the objects of the conspiracy are (i) acting as an agent of
8 a foreign government in the United States without prior
9 notification to the Attorney General; (ii) acting as an agent
10 of a foreign principal in the United States without prior
11 notification to the Attorney General; and (iii) transporting,
12 transmitting or transferring funds to promote specified
13 unlawful acts.

14 You may find the defendant guilty of the crime of
15 conspiracy to commit an offense against the United States even
16 if you find that the substantive crimes that were the objects
17 of the conspiracy were not actually committed. Congress has
18 deemed it appropriate to make conspiracy standing alone a
19 separate crime, even if the conspiracy is not successful.

20 To sustain its burden of proof with respect to the
21 charge of conspiracy, the government must prove beyond a
22 reasonable doubt, the following four elements:

23 First, that at some time during the period from at
24 least in or about 1992 up to and including in or about December
25 2002, two or more persons entered the unlawful agreement

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1 charged in the indictment;

2 Second, that the defendant knowingly and willfully
3 became a member of that conspiracy;

4 Third, that one of the members of the conspiracy, not
5 necessarily the defendant, but any one of the persons involved
6 in the conspiracy, knowingly committed at least one overt act
7 in the Southern District of New York, which includes Manhattan;
8 and

9 Fourth, that the overt act or acts were committed to
10 further some object of the conspiracy.

11 Let us separately consider the four elements. First,
12 whether a conspiracy existed; second, whether the defendant
13 Tongsun Park knowingly and willfully associated himself with
14 and participated in the conspiracy; third, whether the
15 defendant or a co-conspirator committed at least one overt act
16 in the Southern District of New York; and fourth, whether that
17 overt act or acts were committed in furtherance of the
18 conspiracy.

19 Starting with the first element, what is a conspiracy.
20 As I mentioned just a few minutes ago, a conspiracy is an
21 agreement or an understanding between two or more persons to
22 accomplish by joint or concerted action a criminal or unlawful
23 purpose. In this instance, the indictment charges three
24 objects or three unlawful purposes, as I mentioned before.

25 The gist or the essence of the crime of conspiracy is

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1 the unlawful agreement between two or more person to violate
2 the law. As I mentioned earlier, the actual commission of the
3 crime that is the object of the conspiracy is not required.

4 The first element of the crime of conspiracy thus
5 haves two parts; (a) the agreement and (b) the object of the
6 conspiracy.

7 The government must first prove beyond a reasonable
8 doubt that two or more persons entered the unlawful agreement
9 described in the indictment.

10 Now, to prove the existence of a conspiracy, the
11 government is not required to show that two or more people sat
12 around a table and entered into a solemn pact orally or in
13 writing stating that they have formed a conspiracy to violate
14 the law and spelling out all the details. Common sense tells
15 you that when people agree to enter into a criminal conspiracy,
16 much is left to the unexpressed understanding. It is rare that
17 a conspiracy can be proven by direct evidence of an explicit
18 agreement.

19 For the government to show that a conspiracy existed,
20 the evidence must show that two or more persons in some way or
21 manner either explicitly or implicitly came to an understanding
22 to violate the law and to accomplish an unlawful plan.

23 In determining whether there has been unlawful
24 agreement as alleged in the indictment, you may consider the
25 actions of all the alleged co-conspirators that were taken to

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1 carry out the apparent criminal purpose. The old adage actions
2 speak louder than words applies here. Often the only evidence
3 that the available with respect to the existence of a
4 conspiracy is that of disconnected acts on the part of the
5 alleged individual co-conspirators. When taken all together
6 and considered as a whole, however, that conduct may warrant
7 the inference that a conspiracy existed just as conclusively as
8 more direct proof, such as evidence of an express agreement.

9 So, you must first determine whether or not the proof
10 establishes beyond a reasonable doubt the existence of the
11 conspiracy charged in Count 1 of the indictment. In
12 considering this first element, you should consider all the
13 evidence that has been admitted with respect to the conduct and
14 statements of each of alleged co-conspirator and any inferences
15 that may reasonably be drawn from that conduct and those
16 statements. It is sufficient to establish the existence of the
17 conspiracy, as I have already said, if from the proof of all
18 the relevant facts and circumstances you find beyond a
19 reasonable doubt that the minds of at least two alleged
20 co-conspirators met in an understanding way to accomplish by
21 the means alleged one or more of the objectives of the
22 conspiracy charged in the indictment.

23 Object of the conspiracy.

24 The governments bears the burden of proving beyond a
25 reasonable doubt, the existence of a charged conspiracy that

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1 had at least one of the three alleged objects. An object of a
2 conspiracy is an illegal goal that the co-conspirators agree or
3 hope to achieve. If you find that the government has proven
4 beyond a reasonable doubt that a conspiracy existed to achieve
5 any one of the three objects set forth in the indictment, the
6 first element will be satisfied. It is not necessary that you
7 find that a conspiracy existed that had all three objects for
8 you to find this element. However, all of you must agree that
9 the conspiracy had at least one of the objects charged and all
10 the jurors must agree on the same object. You may not convict
11 the defendant of the conspiracy unless you unanimously find
12 that a conspiracy existed with respect to at least one
13 particular object of the three objects charged.

14 I will discuss the three objects of the alleged
15 conspiracy in a few minutes.

16 If you are satisfied that the conspiracy described in
17 the indictment existed, then you must next determine the second
18 question; whether the defendant participated in that conspiracy
19 with knowledge of its unlawful purposes and in furtherance of
20 its unlawful objective. The government must prove by evidence
21 relating to the defendant's own actions and conduct beyond a
22 reasonable doubt that the defendant knowingly, willfully and
23 intentionally entered into the conspiracy with a criminal
24 intent, that is, with a purpose to violate the law, and that
25 the defendant agreed to take part in the conspiracy to promote

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1 and cooperate in its unlawful objective.

2 The use of the terms unlawfully, willfully,
3 intentionally and knowingly requires that for you to find the
4 defendant did join the conspiracy, you must conclude beyond a
5 reasonable doubt that he did so with knowledge of what he was
6 doing, in other words, that he took the actions in question
7 deliberately and voluntarily.

8 An act is done knowingly and intentionally if it is
9 done deliberately and purposefully, that is, the defendant's
10 acts but have been the product of the defendant's conscious
11 objective rather than a product of mistake, action, mere
12 negligence, or other some other innocent reasons.

13 I am not sure what action means in that. Scratch
14 action, ladies and gentlemen. A product of mistake, there must
15 be a word missing, a product of mistake, mere negligence, or
16 some other innocent reasons.

17 Willfully means to act with knowledge that one's
18 conduct is unlawful and with the intent to do something that
19 the law forbids, that is to say, with a bad purpose to disobey
20 or disregard the law.

21 Unlawfully simply means contrary to United States law.
22 The defendant need not have known he was breaking any
23 particular law, but he must have been aware of the generally
24 unlawful nature of his acts under the laws of the United
25 States.

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1 Now, science has not yet devised a way of looking into
2 a person's mind and knowing what that person is thinking. You
3 do have before you, however, the evidence of certain acts and
4 conversations alleged to have taken place with the defendant or
5 with the defendant's knowledge. The government contends that
6 these acts and conversations show beyond a reasonable doubt the
7 defendant's knowledge of the unlawful purposes of the
8 conspiracy.

9 The defendant denies that he was a member of the
10 conspiracy. It is for you to determine whether the government
11 has established beyond a reasonable doubt that such knowledge
12 and intent on the part of the defendant existed. It is not
13 necessary for the government to show that the defendant was
14 fully informed as to all the details of the conspiracy for you
15 to infer knowledge on his part. To have guilty knowledge, the
16 defendant need not know of the full extent of the conspiracy or
17 all of the activities of all of its participant. It is not
18 even necessary for the defendant to know every other member of
19 the conspiracy. In fact, the defendant may know only one other
20 member of the conspiracy and still be a co-conspirator.

21 Each member of a conspiracy may perform separate and
22 distinct acts. Some conspirators may play major roles while
23 others play minor roles in the scheme. An equal role is not
24 what the law requires. In fact, even a single act may be
25 sufficient to draw the defendant within the scope of the

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1 conspiracy.

2 I want to caution you, however, that a person's mere
3 association with a member of the conspiracy does not make that
4 person a member of the conspiracy even when that association is
5 coupled with knowledge that a conspiracy is taking place. Mere
6 presence at the scene of a crime, even coupled with knowledge
7 that a crime is taking place, is not sufficient to support a
8 conviction. In other words, knowledge without agreement and
9 participation is not sufficient. What is necessary is that the
10 defendant participated in the conspiracy with knowledge of its
11 unlawful purpose and with an intent to aid in the
12 accomplishment of an unlawful objective.

13 In sum, the defendant with an understanding of the
14 unlawful nature of the conspiracy must have intentionally
15 engaged, advised, or assisted in the conspiracy for the purpose
16 of furthering an illegal undertaking. The defendant thereby
17 becomes a knowing and willing participant in the unlawful
18 agreement, that is to say, a conspirator.

19 The third element of the conspiracy is the requirement
20 of an overt act. To sustain its burden of proof, the
21 government must show beyond a reasonable doubt that at least
22 one overt act was committed by at least one of the conspirators
23 in the Southern District of New York. Again, I instruct you
24 that as a matter of law, Manhattan falls within the geographic
25 boundaries of the Southern District of New York.

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1 Proof of an overt act is required because there must
2 have been something more than mere agreement on the part of the
3 conspirators, some overt step or action must have been taken by
4 at least one of the conspirators in furtherance of the
5 conspiracy.

6 The government has alleged the following overt acts in
7 the indictment, and I will read them from the indictment now.
8 Ladies and gentlemen, when you go in, we will give you copies
9 of the indictment. I will read you the overt acts which appear
10 in paragraph 7 of the indictment.

11 A. In or about February 1993, Tongsun Park, the
12 defendant, arranged a meeting among Park, Samir Vincent, and a
13 high-ranking United Nations official (U.N. official number 1)
14 at the Manhattan residence of U.N. official number 1.

15 B. In or about 1997, Samir Vincent met with a staff
16 member of an official of the United States government to seek
17 that official's support of a program under which the government
18 of Iraq would be allowed to sell oil and use the revenues to
19 purchase humanitarian goods.

20 C. In or about February 1996, Samir Vincent traveled
21 to Baghdad where he participated in the drafting of agreements
22 with an Iraqi official relating to the compensation of Samir
23 Vincent and Park for their efforts on behalf of the government
24 of Iraq with respect to resolution 986.

25 D. In or about May 1996, near Washington, D.C., Samir

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1 Vincent gave Park approximately \$400,000 in cash that Samir
2 Vincent had received in Manhattan from a representative of the
3 government of Iraq in partial satisfaction of the agreements
4 referenced above in paragraph C.

5 E. In or about 1996, Park, Samir Vincent, and a
6 high-ranking Iraqi official and high-ranking United Nations
7 official (U.N. official number 2) met at a Manhattan
8 restaurant.

9 F. In or about July 1997, Samir Vincent wrote a
10 letter to a high-level Iraqi official in which Samir Vincent
11 explained that both Samir Vincent's group and the Korean group,
12 a reference to Park, were supposed to take care of U.N.
13 official number 1 from the money that the two groups received
14 pursuant to the agreements referenced above in paragraph C.

15 G. In or about -- that's pretty good circumstantial
16 evidence that it's about to rain -- in or about July 1997, Park
17 traveled to Iraq to collect money from representatives of the
18 government of Iraq.

19 H. In or about August 1997, Park met U.N. official
20 number 2 in Manhattan to discuss Park's investment in a company
21 in which U.N. official number 2 had a financial interest.

22 I. On or about February 12, 2001, Samir Vincent and a
23 representative of the government of Iraq signed a contract in
24 which Iraq agreed to sell Samir Vincent approximately 2 million
25 barrels of oil as part of the oil-for-food program.

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1 J. In or about April 2001, Samir Vincent wrote a
2 letter to an official of the government of Iraq in which Samir
3 Vincent emphasized his efforts on behalf of the government of
4 Iraq in the United States and recommended that any required
5 surcharges on his oil allocations under the oil-for-food
6 program be deducted from the amount still owed to him under the
7 agreements referenced above in paragraph C.

8 Then finally,

9 K. On or about May 20, 2002, Samir Vincent sent a
10 letter to an official of the Iraqi Intelligence Service in
11 which Samir Vincent emphasized his efforts on behalf of the
12 government of Iraq in the United States and requested payment
13 of the amount still owed to him under the agreements referenced
14 above in paragraph C.

15 So those are the overt acts that are alleged in the
16 indictment.

17 For the government to satisfy this element, it is not
18 required that all of the overt acts alleged in the indictment
19 being proven. You may also find that overt acts not alleged in
20 the indictment were committed. The only requirement is that
21 one of the members of the conspiracy, not necessarily the
22 defendant in this case, has taken some step or action in
23 furtherance of the conspiracy in the Southern District of New
24 York during the life of the conspiracy. To put plainly, the
25 overt act element requires that the agreement went beyond the

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Charge

1 mere talking or agreement stage.

2 You are further instructed that the overt act need not
3 have been committed at precisely the time of the indictment.

4 It is sufficient if you are convinced beyond a reasonable doubt
5 that it occurred at or about the time and place stated, so long
6 as it occurred while the conspiracy was still in existence. As
7 I will instruct you in more detail in moment, however, to
8 convict, you must find that at least one overt act in
9 furtherance of the conspiracy was committed, not necessarily by
10 the defendant but by any co-conspirator, on or after January
11 23, 2001.

12 You should bear in mind that the overt act standing
13 alone may be an innocent, lawful act. Frequently, however, an
14 apparently innocent act sheds its harmless character if it is a
15 step in carrying out, promoting, aiding, or assisting the
16 conspiratorial scheme. You are therefore instructed that the
17 overt act does not have to be an act that in and of itself is
18 illegal.

19 The fourth and final element that the government must
20 prove beyond a reasonable doubt is that the overt act was
21 committed for the purpose of carrying out the unlawful
22 agreement. For the government to satisfy this element, it must
23 prove beyond a reasonable doubt that at least one overt act was
24 knowingly done during the period when the conspiracy was in
25 existence by at least one conspirator in furtherance of the

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1 object of the conspiracy charged in the indictment.

2 Now I am going to instruct you as to the elements of
3 the underlying crimes alleged to have been the objects of the
4 charged conspiracy.

5 The first two objects involve what I will call the
6 prior notification statute and FARA. These statutes have
7 similar purposes as they recognize that government officials
8 and the public generally should be able to identify those who
9 act on behalf of a foreign government or principal. Public
10 disclosure is needed for the public and the government to be
11 actively able to evaluate the activity of others. The laws are
12 intended to protect against interference with the foreign
13 relations, neutrality, and foreign commerce of the United
14 States. The third object involves what is sometimes referred
15 to as the money laundering statute which in this context
16 prohibits the transporting of funds into the United States to
17 promote a violation of FARA.

18 Of the first alleged object of the conspiracy is
19 acting in the United States as an agent of a foreign government
20 without prior notification to the Attorney General of the
21 United States. The relevant statute is Title 18 U.S.C. Section
22 951, which provides in relevant part as follows:

23 Whoever acts in the United States as an agent of a
24 foreign government without prior notification to the Attorney
25 General shall be guilty of a crime.

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1 There are three elements to this crime:

2 First, that a conspirator, not necessarily the
3 defendant, acted in the United States as an agent of a foreign
4 government, specifically in this case, the government of Iraq;

5 Second, that the conspirator failed to notify the
6 Attorney General of the United States that he would be acting
7 in the United States as an agent of the foreign government
8 prior to so acting;

9 Third, that the conspirator acted knowingly and knew
10 that he had not provided prior notification to the Attorney
11 General; and

12 Fourth, that the conspirator acted at least in part as
13 an agent for the foreign government in the Southern District of
14 New York.

15 The government need not prove that any of the
16 conspirators knew of the requirement to notify the Attorney
17 General before acting as an agent of a foreign government. In
18 addition, I instruct you that the notification required under
19 the statute shall be effective only if it is made by the agent
20 in the form of a letter, telex or facsimile addressed to the
21 Attorney General prior to an agent commencing the services in
22 the United States on behalf of the foreign government.

23 An agent of a foreign government means an individual
24 who agrees to operate within the United States subject to the
25 direction or control of a foreign government or official. The

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Charge

1 term does not include any person engaged in a legal commercial
2 transaction.

3 The term legal commercial transaction means any
4 exchange, transfer, purchase or sale of any commodity, service
5 or property of any kind not prohibited by federal or state law.

6 The term foreign government includes any person or
7 group of persons exercising sovereign political jurisdiction
8 over any country, other than the United States, or over any
9 part of such country and includes any subdivision of any such
10 group or agency to which such sovereign authority or functions
11 are directly or indirectly delegated.

12 I have explained the meaning of the term knowingly,
13 and you should use that definition.

14 The second alleged object of the conspiracy is acting
15 in the United States as an agent of a foreign principal without
16 filing a registration statement with the Attorney General of
17 the United States. The relevant statute is Title 22, 18
18 U.S.C., Section 612(a) which provides in relevant part as
19 follows:

20 No person shall act as an agent of a foreign principal
21 unless he has filed with the Attorney General a true and
22 complete registration statement and supplements thereto as
23 required by law.

24 The statutes continues:

25 Every person who becomes an agent of a foreign

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1 principal shall within 10 days thereafter file with the
2 Attorney General in duplicate a registration statement under
3 oath on a form prescribed by the Attorney General. The
4 obligation of an agent of a foreign principal to file a
5 registration statement shall, after the 10th day of his
6 becoming such agent, continue from day to day, and termination
7 of such status shall not relieve such agent of his obligation
8 to file a registration statement for the period during which he
9 was an agent of a foreign principal.

10 Finally, Title 22, U.S.C., Section 618(a)(1) provides
11 that anyone who willfully violates these provisions shall be
12 guilty of a crime.

13 There are four elements to this crime.

14 First, that a conspirator, not necessarily the
15 defendant, acted in the United States as an agent of a foreign
16 principal, specifically in this case, the government of Iraq;

17 Second, that the conspirator failed to file with the
18 Attorney General of the United States a true and complete
19 registration form as required by law;

20 Third, that the conspirator acted willfully and knew
21 that he had not filed the requisite registration form with the
22 Attorney General; and

23 Fourth, that the conspirator acted at least in part as
24 an agent for a foreign principal in the Southern District of
25 New York.

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Charge

1 Let me define some of the terms.

2 The term person includes an individual, partnership,
3 association, corporation, organization, or any other
4 combination of individuals. The term foreign principal
5 includes a government of a foreign country and a foreign
6 political party. The alleged foreign principal in this case is
7 the government of Iraq. The term agent of a foreign principal
8 is defined as:

9 (1) any person who acts as an agent, representative,
10 employee or servant or any person who acts in any other
11 capacity at the order, request, or under the direction or
12 control of a foreign principal or of a person, any of whose
13 activities are directly or indirectly supervised, directed,
14 controlled, financed, or subsidized in whole or in major part
15 by a foreign principal and who directly or through any other
16 person (i) engages in the United States in political activities
17 or in the interests of such foreign principal; (ii) acts within
18 the United States as a public relations counsel, publicity
19 agent, information-service employee or political consultant for
20 or in the interests of such foreign principal; (iii) within the
21 United States solicits, collects, disburses, or dispenses
22 contributions, loans, money or other things of value for or in
23 the interest of such foreign principal; or (iv) within the
24 United States represents the interests of such foreign
25 principal before any agency or official of the government of

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1 the United States; and

2 (2) any person who agrees, consents, assumes or
3 purports to act as or who is or holds himself out to be,
4 whether or not pursuant to contractual relationship, an agent
5 of a foreign principal as defined above.

6 The term political activities means any activity that
7 the person engaging in believes will or that the person intends
8 to in any way influence any agency or official of the
9 government of the United States or any section of the public
10 within the United States with reference to formulating,
11 adopting, or changing domestic or foreign policy of the United
12 States or with reference to the political or public interests,
13 policies, or relations of a government of a foreign country or
14 a foreign political party.

15 An agent of a foreign principal is exempt from the
16 filing requirements if the person engages or agrees to engage
17 only (1) in private or nonpolitical activity in furtherance of
18 the bona fide trade or commerce of such foreign principal; or
19 (2) in other activities not serving predominantly a foreign
20 interest; or (3) in the solicitation or collecting of funds and
21 contributions within the United States to be used only for
22 medical aid and assistance or for food and clothing to relieve
23 human suffering.

24 I have explained the meaning of the term willfully,
25 and you should use that definition here as well.

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Charge

1 The third alleged object of the conspiracy is the
2 transporting or attempted transporting of funds to promote
3 specified unlawful activity. The relevant statute is Title 18
4 U.S.C. Section 1956(a)(2)(A), which provides in relevant part:

5 Whoever transports, transmits, or transfers, or
6 attempts to transport, transmit or transfer, a monetary
7 instrument or funds from a place in the United States to or
8 through a place outside the United States or to a place in the
9 United States from or through a place outside the United States
10 with the intent to promote the carrying on of specified
11 unlawful activity, shall be guilty of a crime.

12 There are three elements to this crime:

13 First, that a conspirator, not necessarily the
14 defendant, knowingly transported, transmitted or transferred or
15 attempted to transport, transmit or transfer a monetary
16 instrument or funds;

17 Second, that the transportation, transmission, or
18 transfer was or was intended to be to a place in the United
19 States from or through a place outside the United States;

20 Third, that the intent in transporting, transmitting
21 or transferring the money instrument or funds was to promote
22 the carrying on of specified unlawful activity, will is in this
23 case, acting as an agent of a foreign principal without filing
24 the requisite registration form with the Attorney General as
25 described above.

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Charge

1 Let me define some terms.

2 The term monetary instrument includes currency of the
3 United States or any other country, travelers checks, personal
4 checks, bank checks, money orders, and other negotiable
5 instruments. The term funds refers to among other things
6 money.

7 Transport, transmit, and transfer are not words that
8 require definition; those words have their ordinary everyday
9 meaning. The government may but need not prove that the
10 defendant physically carried the funds or monetary instrument
11 to prove that the defendant is responsible for transporting it.
12 All that is required is to prove that the defendant caused the
13 funds or monetary instrument to be transported, transmitted, or
14 transferred to a place in the United States from or through a
15 place outside the United States.

16 In this context the term promote means to encourage,
17 to help bring into being, or to move forward or further a
18 particular goal. It is not limited to the financing of future
19 criminal acts. A conspirator can also promote the carrying on
20 of specified unlawful activity by receiving the proceeds of
21 that unlawful activity if that receipt is part of the
22 completion of the unlawful activity. This is true even if the
23 conspirator then uses those proceeds for purely personal
24 purposes.

25 Certain evidence was admitted at this trial concerning

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Charge

1 acts and statements of others because such acts were committed
2 and such statements were made by people who the government
3 contend were confederates or co-conspirators of the defendant.

4 The reason for allowing this evidence to be received
5 against the defendant has to do with the nature of the crime of
6 conspiracy. As I have said, a conspiracy is often referred to
7 as a partnership in crime. As in other types of partnerships
8 when people enter into a conspiracy to accomplish an unlawful
9 end, each and every member becomes an agent for the other
10 conspirators in carrying out the conspiracy.

11 Therefore, the reasonably foreseeable acts or
12 statements of any member of the conspiracy committed in
13 furtherance of the common purpose of the conspiracy are deemed
14 under the law to be the acts or statements of all of the
15 members and all of the members are responsible for such acts or
16 statements.

17 If you find beyond a reasonable doubt that the
18 defendant was a member of the conspiracy alleged in the
19 indictment, than any acts done or statements made in
20 furtherance of the conspiracy by a person also found by you to
21 have been a member of the same conspiracy may be considered
22 against the defendant. This is so even if such acts were
23 committed or such statements were made in the defendant's
24 absence and without his knowledge.

25 Before you may consider the acts or statements of a

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Charge

1 co-conspirator in deciding the guilt of the defendant, you must
2 first determine that the acts were committed or that the
3 statements were made during the existence and in furtherance of
4 the unlawful scheme to which the defendant knowingly agreed.
5 If the acts were done or the statements were made by someone
6 whom you do not find to have been a member of the conspiracy
7 or if they were not in furtherance of the conspiracy to which
8 the defendant knowingly agreed, then they may not be considered
9 by you in deciding whether the defendant is guilty or not
10 guilty.

11 Acts done or statements made by an alleged
12 co-conspirator before a defendant joined a conspiracy may also
13 be considered by you in determining whether the government has
14 proven beyond a reasonable doubt the existence of a conspiracy.
15 Acts done or statements made before an alleged conspiracy began
16 or after an alleged conspiracy ended, however, may only be
17 considered by you regarding the person who performed that act
18 or made that statement.

19 As I have explained, Count 1 of the indictment
20 requires the government to prove that the defendant acted
21 knowingly. In determining whether the defendant acted
22 knowingly, you may consider whether the defendant deliberately
23 closed his eyes to what otherwise would have been obvious.

24 Knowledge on the part of the defendant cannot be
25 established by showing that the defendant was careless,

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Charge

1 negligent or foolish. On the other hand, one may not willfully
2 and intentionally remain ignorant of a fact material and
3 important to his conduct to escape the consequences of criminal
4 law.

5 Thus, if you find beyond a reasonable doubt that the
6 defendant was aware that there was a high probability that a
7 co-conspirator was acting as an agent of a foreign government
8 without notifying the Attorney General or acting as an agent of
9 a foreign principal without registering or transmitting funds
10 to promote the acting as an unregistered agent of the foreign
11 principal but that the defendant deliberately and consciously
12 avoided confirming this fact, then you may treat this
13 deliberate avoidance of positive knowledge as the equivalent of
14 knowledge, unless you find that the defendant actually believed
15 that he was not engaged in such unlawful behavior. In other
16 words, a defendant cannot avoid criminal responsibility for his
17 own conduct by deliberately closing his eyes or remaining
18 purposefully ignorant of facts that would confirm to him that
19 he was engaged in criminal conduct.

20 The indictment charges that this conspiracy existed
21 from at least in or about 1992 up to and including in or about
22 December 2002. It is not essential that the government prove
23 that the conspiracy started and ended on those specific dates.
24 It is sufficient if you find that, in fact, a conspiracy was
25 formed, that it existed for any time within the period set

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Charge

1 forth in the indictment, and that at least one overt act was
2 committed by any conspirator in furtherance of the conspiracy
3 after -- it should be on or after -- on or after January 23,
4 2001.

5 The duration and extent of the defendant's
6 participation has no bearing on the issue of the defendant's
7 guilt. He need not have joined the conspiracy at the outset.
8 He may have joined it at any time in its progress and he will
9 still be held responsible for all that was done before he
10 joined and all that was done during the conspiracy's existence
11 while he was a member.

12 A conspiracy once formed is presumed to continue until
13 either its objective is accomplished or there is some
14 affirmative act of termination by its members. Where a
15 conspiracy's purpose is economic enrichment, that jointly
16 undertaken scheme continues through the conspirators' receipt
17 of their anticipated economic benefit. So too, once a person
18 is found to be a member of a conspiracy, that person is
19 presumed to continue his or her membership in the venture until
20 the last overt act by any of the co-conspirators, or its
21 termination, unless it is shown by some firm affirmative proof
22 of the individual's withdrawal from the conspiracy.

23 In most situations the law imposes a limit on the time
24 the government has to indict a person for committing a crime.
25 This is called the statute of limitations. In this case the

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Charge

1 statute of limitations is five years. Thus, the government
2 must convince you beyond a reasonable doubt that the conspiracy
3 charged in the indictment continued until at least January 23,
4 2001, five years prior to the filing of the indictment.

5 The government must also prove beyond a reasonable
6 doubt that at least one overt act in furtherance of the
7 conspiracy was committed by any conspirator, not necessarily
8 the defendant, on or after January 23, 2001. Further, that
9 overt act must have been reasonably foreseeable to the
10 defendant.

11 Thus, if you are not persuaded that the charged
12 conspiracy continued until January 23, 2001, or you are not
13 persuaded that at least one overt act in furtherance of the
14 conspiracy was committed on or after January 23, 2001, or that
15 such overt act was not reasonably foreseeable to the defendant,
16 then you must find the defendant not guilty. On the other
17 hand, if you find that Park was a member of a conspiracy that
18 continued to until at least January 23, 2001 and that at least
19 one overt act was committed, not necessarily by the defendant,
20 on or after January 23, 2001, then you must find him guilty.

21 Moreover, until August 26, 2001, the international
22 transportation of funds for the purpose of promoting a
23 violation of FARA, the third object alleged in the indictment
24 was not a crime. Therefore, for you to find the defendant
25 guilty of conspiring to transport, transmit, or transfer funds,

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Charge

1 the government must prove in addition to the requirements set
2 forth above, beyond a reasonable doubt that at least one overt
3 act in furtherance of the money laundering object of the
4 conspiracy was committed by any conspirator after October 26,
5 2001.

6 The defendant has raised the defense that if he was a
7 member of a conspiracy, he withdrew from that conspiracy. You
8 should only consider this defense if you have found that the
9 government has proven beyond a reasonable doubt that there was
10 a conspiracy as alleged in the indictment and that the
11 defendant knowingly and voluntarily became a member of that
12 conspiracy.

13 As I have said, once a person joins a conspiracy, that
14 person remains a member until the conspiracy is completed or he
15 withdraws from it. Any withdrawal must be complete and it must
16 be done in good faith.

17 A person can withdraw from a conspiracy by taking some
18 affirmative steps to terminate or abandon his participation in
19 and efforts to promote the conspiracy. In other words, the
20 defendant must have demonstrated some type of definite,
21 decisive or affirmative action that disavowed or defeated the
22 purpose of the conspiracy. Mere cessation of conspiratorial
23 activities is not enough to satisfy this standard. For
24 withdrawal to be complete, the defendant must not take any
25 subsequent acts to promote the conspiracy or receive any

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Charge

1 additional benefit from the conspiracy.

2 By way of example, a defendant may withdraw from a
3 conspiracy by giving timely warning to the proper law
4 enforcement officials or wholly depriving his prior efforts of
5 effectiveness in the commission of the crime or doing acts that
6 are inconsistent with the objective of the conspiracy and
7 making reasonable efforts to communicate those acts to his
8 co-conspirators.

9 Withdrawal from a conspiracy does not erase a
10 conspirator's participation in a conspiracy prior to his
11 withdrawal. Put another way, withdrawal is only
12 forward-looking; it is not retroactive.

13 The defendant has the burden of proving that he
14 withdrew from the conspiracy by a preponderance of the
15 evidence. To prove something by a preponderance means to prove
16 that it is more likely true than not. It is determined by
17 considering all the evidence and deciding which evidence is
18 more convincing.

19 In determining whether the defendant has proven that
20 he withdrew from the conspiracy, you may consider the relevant
21 testimony of all witnesses, regardless of who may have called
22 them, and all the relevant exhibits received in evidence
23 regardless of who may have produced them. If the evidence
24 appears to be equally balanced, or if you cannot say upon which
25 side it weighs heavier, you must resolve this question against

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Charge

1 the defendant.

2 The fact that the defendant has raised this defense
3 does not relieve the government of its burden of proving that
4 there was an agreement and that the defendant knowingly and
5 voluntarily joined it. Those are things that the government
6 still must prove beyond a reasonable doubt for you to convict
7 the defendant of the crime of conspiracy.

8 If you determine that the defendant withdraw from the
9 conspiracy, then any acts or declarations of a co-conspirator
10 that are made after the date of the defendant's withdrawal
11 cannot be considered as evidence against the defendant.

12 Here, there are two inquiries related to the
13 withdrawal defense, assuming that you find that the conspiracy
14 alleged in the indictment existed. First, has Mr. Park proven
15 by a preponderance of the evidence that he withdrew prior to
16 January 23, 2001; second, if not has he proven that he withdrew
17 prior to October 26, 2001. Obviously, if you answer the first
18 question yes, you need not reach the second question.

19 The defendant contends contend that the government's
20 proof fails to show the existence of only one overall
21 conspiracy. Rather, the defendant contends that, if anything,
22 there were actually several separate and independent
23 conspiracies with various groups of members.

24 Whether there existed a single unlawful agreement or
25 many such agreements or indeed no agreement at all is a

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Charge

1 question of fact for you, the jury, to determine in accordance
2 with the instructions I am about to give you.

3 When two or more people join together to further one
4 common unlawful design or purpose, a single conspiracy exists.
5 By way of contrast, multiple conspiracies exist when there are
6 separate unlawful agreements to achieve distinct purposes.
7 Here, Count 1 of the indictment charges a single conspiracy,
8 the purposes or objects of which have been described above.

9 You may find that there was a single conspiracy
10 despite the fact that there were changes in personnel, by the
11 withdrawal of some members and/or additions of new members, or
12 changes in activities, or both. All that is required is that
13 at least some co-conspirators continued to act for the entire
14 duration of the conspiracy for the purposes charged in the
15 indictment. That the members of a conspiracy are not always
16 identical does not necessarily imply that separate conspiracies
17 exist.

18 Even if you should find that there were multiple
19 conspiracies, however, you may still convict the defendant on
20 the conspiracy charge if you find beyond a reasonable doubt
21 that one of those conspiracies was the conspiracy charged in
22 the indictment, as long as the government also proves beyond a
23 reasonable doubt that the defendant was a member of that
24 conspiracy.

25 Remember that the proof of several separate and

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Charge

1 independent conspiracies is not necessarily proof of the
2 conspiracy charged in the indictment. Rather, the key in that
3 event is whether one of the conspiracies proven is in fact the
4 conspiracy charged in the indictment. If you find that the
5 government failed to prove the existence of the conspiracy
6 charged in Count 1, you cannot find the defendant guilty even
7 if you find that some conspiracy other than the one charged in
8 Count 1 existed, even though the purposes of both conspiracies
9 may have been similar and even though there may have been some
10 overlap in membership.

11 Likewise, if you find that the defendant was a member
12 of some other conspiracy that is not charged in the indictment
13 and was not a member of the particular conspiracy charged in
14 the indictment, then you must acquit the defendant on Count 1.

15 Therefore, as to this issue, what you must do is
16 determine whether the conspiracy charged in Count 1 existed.
17 If it did, you then must determine the nature of the conspiracy
18 and whether the defendant was a member.

19 We are almost done.

20 The defendant Tongsun Park has pled not guilty. In so
21 doing Mr. Park has denied every allegation against him. As a
22 result of his plea of not guilty, the burden is on the
23 government to prove the defendant's guilt beyond a reasonable
24 doubt. This burden never shifts to the defendant for the
25 simple reason that the law never imposes upon a defendant in a

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Charge

1 criminal case the burden or duty of calling any witness or
2 producing any evidence.

3 The law presumes a defendant to be innocent of all
4 charges against him. I have therefore instructed you that
5 Mr. Park is to be presumed by you to be innocent throughout
6 your deliberations.

7 The defendant began the trial here with a clean slate.
8 This presumption of innocence alone is sufficient to acquit the
9 defendant unless you as jurors are unanimously convinced beyond
10 a reasonable doubt of his guilt after a careful and impartial
11 consideration of all the evidence in this case. If the
12 government fails to sustain its burden as to the defendant,
13 you must find him not guilty. This presumption was with the
14 defendant when the trial began, remains with him even now as I
15 speak to you, and will continue with him into your
16 deliberations unless and until you are convinced that the
17 government has proven his guilty beyond a reasonable doubt.

18 Now, the question naturally is what is reasonable
19 doubt. The words almost define themselves. It is a doubt that
20 a reasonable person has after carefully weighing all of the
21 evidence. It is a doubt that would cause a reasonable person
22 to hesitate to act in a matter of importance in his or her
23 personal life. Proof beyond a reasonable doubt must,
24 therefore, be proof of such a convincing character that a
25 reasonable person would not hesitate to rely and act upon it in

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1 the most important of his or her own affairs. A reasonable
2 doubt is not caprice or whim; it is not speculation or
3 suspicion. It is not an excuse to avoid the performance of an
4 unpleasant duty. And it is not sympathy.

5 In a criminal case, the burden of proof burden is at
6 all times upon the government to prove guilt beyond a
7 reasonable doubt. The law does not require that the government
8 prove guilt beyond all possible doubt, but rather proof beyond
9 a reasonable doubt is sufficient to convict. The burden never
10 shifts to the defendant which means that it is always the
11 government's burden to prove each of the elements of the crimes
12 charged beyond a reasonable doubt.

13 If after a fair and impartial consideration of all the
14 evidence you have a reasonable doubt as to the defendant, you
15 must acquit the defendant. On the other hand -- that should be
16 as to the guilt of the defendant. Let me do that sentence
17 again.

18 If after fair and impartial consideration of all of
19 the evidence you have a reasonable doubt as to the guilt of the
20 defendant, you must acquit the defendant. On the other hand,
21 if after fair and impartial consideration of all the evidence
22 you are convinced beyond a reasonable doubt of the guilt of the
23 defendant, it is your duty to convict the defendant.

24 The defendant did not testify in this case. Under our
25 Constitution, a defendant has no obligation to testify or to

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1 present any evidence because it is the government's burden to
2 prove a defendant guilty beyond a reasonable doubt. That
3 burden remains with the government throughout the entire trial
4 and never shifts to the defendant. A defendant is never
5 required to prove that he is innocent.

6 You may not attach any significance to the fact that
7 the defendant here did not testify. No adverse inference
8 against him may be drawn by you because he did not take the
9 witness stand. You may not consider this against him in any
10 way in your deliberations in the jury room.

11 Members of the jury, that about concludes my
12 instructions to you. You are about to go into the jury room to
13 begin your deliberations. If during those deliberations you
14 want to see any of the exhibits, you may request to see them
15 and we will either send them into the jury room or we will
16 bring you back out to the courtroom to see them. If you want
17 any of the testimony read, you may also request that. Please
18 remember that it is not always easy to locate what you might
19 want, so be as specific as you possibly can in requesting
20 exhibits or portions of the testimony.

21 If you want any further explanation of the law as I
22 have explained it to you, you may also request that from the
23 court. If there is any doubt or question about the meaning of
24 any part of this charge, you should not hesitate to send me a
25 note asking for clarification or for a further explanation.

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1 Your requests for exhibits or testimony, in fact, any
2 communications with the court, should be made to me in writing,
3 signed by your foreperson and given to one of the marshals. In
4 any event, do not tell me or anyone else how the jury stands on
5 any issue until after a unanimous verdict is reached.

6 By the way, if you want some testimony read back,
7 please be as specific as you can because, otherwise, you could
8 be asking for a lot. If you ask for the testimony of
9 Mr. Vincent, for example, you would be getting whatever it was,
10 five days or six days worth. If there is something in
11 particular you want, please be as specific as you can.

12 In addition, please be patient. You probably won't
13 get an immediate response. If you send out a note, I have to
14 find the lawyers, look at your note, figure out what you are
15 asking, figure out what the right response is. If you ask for
16 testimony, we have to locate the right testimony. So be
17 patient. Sometimes it will take a while to respond.

18 Many of you have taken notes periodically throughout
19 the trial. I want to emphasize to you as you are about to
20 begin your deliberations that your notes are simply an aid to
21 memory. Notes that any of you may have made may not be given
22 any greater weight or influence in determination of the case
23 than the recollections or impressions of other jurors, whether
24 from notes or memory, with respect to the evidence presented or
25 what conclusions if any should be drawn from such evidence.

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1 Any difference between a juror's recollection and another
2 juror's notes should be settled by asking to have the court
3 reporter read back the transcript for it is the court record
4 rather than any juror's notes upon which the jury must base its
5 determination of the facts and its verdict.

6 Your verdict must be based solely upon the evidence
7 developed at trial or the lack of evidence. It would be
8 improper for you to consider, in reaching your decision as to
9 whether the government sustained its burden of proof, any
10 personal feelings you may have about the defendant's race,
11 religion, national origin, sex or age. The defendant in this
12 case is entitled to a trial free from prejudice, and our
13 judicial system cannot work unless you reach your verdict
14 through a fair and impartial consideration of the evidence.

15 (Continued on next page)

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1 THE COURT: Under your oath as jurors, you are not to
2 be swayed by sympathy. You are to be guided solely by the
3 evidence in this case and the crucial question that you must
4 ask yourselves as you sift through the evidence is, has the
5 government proven the guilt of the defendant beyond a
6 reasonable doubt. It is for you alone to decide whether the
7 government has proven that the defendant is guilty of the crime
8 charged solely on the basis of the evidence and subject to the
9 law as I have charged it to you. It must be clear to you that
10 once you let fear, prejudice, bias or sympathy interfere with
11 your thinking, there is a risk that you will not arrive at a
12 true and just verdict.

13 If you have reasonable doubt as to the guilt of the
14 defendant, you should not hesitate for any reason to find a
15 verdict of acquittal. But, on the other hand, if you should
16 find that the government has met its burden of proving the
17 defendant's guilt beyond a reasonable doubt, you should not
18 hesitate because of sympathy or any other reason to render a
19 verdict of guilty against the defendant.

20 I caution you also that under your oath as jurors you
21 cannot allow a consideration of the punishment that may be
22 imposed upon the defendant if he is convicted to enter into
23 your deliberations. The duty of imposing sentence in the event
24 of conviction rests exclusively upon the Court, upon me, and
25 the issue of punishment may not affect your deliberations as to

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1 whether the government has proven the defendant's guilt beyond
2 a reasonable doubt.

3 Your verdict must be unanimous. Each juror is
4 entitled to his or her own opinion, but you are required to
5 exchange views with your fellow jurors. This is the very
6 essence of your deliberation. It is your duty to discuss the
7 evidence. If you have a point of view and after reasoning with
8 other jurors it appears that your own judgment is open to
9 question, then of course you should not hesitate in yielding
10 your original point of view, if you are convinced that the
11 opposite point of view is really one that satisfies your
12 judgment and conscience.

13 You are not to give up a point of view, however, that
14 you conscientiously believe in simply because you are
15 outnumbered or outweighed. You should vote with the others
16 only if you are convinced on the evidence, the facts and the
17 law that it is the correct way to decide the case.

18 You should by your own vote select one of you to sit
19 as your foreperson. The foreperson will send out any notes and
20 when the jury has reached a verdict, he or she will notify the
21 marshal that the jury has reached a verdict and when you come
22 into open court, the foreperson will be asked to state what the
23 verdict is.

24 We have prepared a verdict form for you to use in
25 recording your decisions. You can take a look at the other

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1 document that we gave. This is the verdict form. The
2 foreperson should hold on to a master and when you have reached
3 a verdict, the foreperson will sign and date the master and
4 hand it to the deputy when you come back into the courtroom.
5 You only hand in the one master.

6 Answer all applicable questions in the order in which
7 they appear and follow the instructions on the form. After you
8 have reached a verdict, the foreperson should fill in the
9 verdict sheet, sign and date it, and then give a note to the
10 marshal outside your door stating that you have reached a
11 verdict. Do not specify what your verdict is in the note.
12 Instead, the foreperson should retain the verdict sheet and
13 hand it to us in open court when you are all called in. I will
14 stress again that each of you must be in agreement with the
15 verdict that is announced in court. Once your verdict is
16 announced by your foreperson in open court, and officially
17 recorded, it cannot ordinarily be revoked.

18 Now, if you will just be patient for a moment while I
19 see the lawyers in the hallway to see whether I missed
20 anything.

21 (Continued next page)

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1 (In the robing room)

2 THE COURT: On page 25, my law clerk noticed that it
3 says "three elements" when there really are four, so I will
4 correct that error.

5 On page 37, my law clerk heard me read August 26,2001
6 and not October. I'll just correct that, just to be sure.

7 Were there any other objections, corrections,
8 exceptions? You don't need to repeat anything from before.

9 MR. O'CALLAGHAN: Your Honor, not to the charge but I
10 just noticed a small typo on the verdict sheet on number 4, I
11 think the word "after" is missing.

12 THE COURT: I'll just have the jury handwrite it in.
13 Anything else?

14 MR. O'CALLAGHAN: Nothing from the government.

15 THE COURT: All right, we'll go out and fix those
16 things.

17 (Continued on next page)

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Charge

1 (In open court; jury present).

2 THE COURT: Okay, ladies and gentlemen, there were a
3 couple of small errors.

4 In your copy of the charge, if you will turn to page
5 25, you will notice in the middle of the page, I say there are
6 three elements to this crime. In fact, there are four. So
7 just cross out "three" and write in "four," and the four
8 elements are listed on that page and the following page.

9 Next, on page 37, in the first full paragraph where it
10 says "Moreover, until October 26, 2001," my law clerk, my
11 trusty law clerk says I said "August." If I said August, that
12 was a mistake. I meant to say October. It's correct as
13 written, October 26.

14 And then finally, in the verdict sheet, there is a
15 small typographical error. On page 2 of the verdict sheet, in
16 question 4, it says "on or January 23, 2001," please insert the
17 word "after." It should be "on or after." Question 4, on page
18 2, "on or after January 23, 2001." And that is it. We shall
19 swear in the Court security officer.

20 (Court security officer sworn)

21 THE COURT: Okay, now, ladies and gentlemen. It's
22 twenty minutes to five. You can stay and work for a while if
23 you want, it's up to you. It's been a long day. If you want
24 to go home, go home. Just let us know. Send out a note, tell
25 us whether you want to work for a while or go home, it's

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1 entirely up to you.

2 Tomorrow we'll start at 9:30. You can't start
3 deliberating until everyone is here, and you can -- I have an
4 engagement tomorrow night, so if you're not done by 5:15 or so,
5 I'm going to send you home until Friday, when you would come
6 back to continue, if you're not done tomorrow.

7 And also, our only remaining alternate, Ms. Garcia,
8 will be excused now, but you can go in, say goodbye, gather
9 your things and come back out. Okay, ladies and gentlemen?
10 And you also have to pick and vote for a foreperson. Why don't
11 you go ahead in?

12 (Continued on next page)

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Deliberations

1 (In open court; jury not present)

2 THE COURT: When the alternate comes back out, I will
3 excuse her.

4 MR. KIM: Your Honor, what is your Honor's preference
5 for where the lawyers should be while the jury is deliberating?
6 Would you like us to be in the courtroom or in the area?

7 THE COURT: Don't be more than five minutes away. You
8 can be down in the cafeteria if you like. Leave word with the
9 deputy where you'll be. The government can go to their office
10 in the building. If you like, I can give you a note for one
11 cell phone. Try to keep one person here, if possible, but I'll
12 do something so you can get in a cell phone and that will help.

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Deliberations

1 (In open court; jury present).

2 THE COURT: Please be seated. This will take ten
3 seconds. Okay. Ladies and gentlemen, if I were you, I would
4 go home too, so that's fine. Don't discuss the case with
5 anyone. No investigation or research. We'll start tomorrow at
6 9:30. As soon as you are all here, you can begin your
7 deliberation. Don't start until all twelve of you are here.
8 Don't be late so that you can get going at 9:30 sharp. Have a
9 good evening.

10 Ms. Garcia, thank you for your service. I don't know
11 whether you're happy or unhappy about being discharged at this
12 point. We will call you when there is a verdict. In the
13 meantime, don't discuss the case with anyone. Don't read
14 anything or watch anything, just wait until you hear from us.
15 Once you hear from us that there is a verdict, then you are
16 released from all of the obligations and restrictions that I
17 imposed and you're free to talk about your experiences here,
18 good or bad.

19 Have a great trip and thank you. And all of you, good
20 night, we'll see you tomorrow.

21 (Continued on next page)

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Deliberations

1 (In open court; jury not present)

2 THE COURT: Just for the record, I have marked as
3 Court Exhibit 106 the note from the jury saying that it will
4 begin deliberations tomorrow. "Going home for the day." And
5 for your information, the foreperson is juror number 2. See
6 you tomorrow.

7 MR. KIM: Thank you, your Honor.

8 MR. O'CALLAGHAN: Good night.

9 (Adjourned to July 13, 2006 at 9:30 a.m.)

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